

INTEROFFICE MEMO



DATE May 14, 2004

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TO **HONORABLE PLANNING COMMISSION**

May 20, 2004 Agenda Item No. 2

SUBJECT **Mitsubishi Cement Corporation Cushenbury Mine Expansion** - Additional information, correspondence and errata

The following memorandum addresses the following:

- A summary of the current hearing status for this application
- An overview and clarification of issues and concerns addressed at the last hearing
- A summary of the modifications to the conditions of approval/mitigation measures
- All correspondence received since the last hearing on May 6, 2004
- Applicant's proposed Statement of Facts, Findings and Statement of Overriding Considerations

Current hearing status

The Planning Commission opened the public hearing on May 6, 2004. Staff and the applicant completed their presentations, and public testimony was completed. The Final Environmental Impact Report (FEIR) was completed May 5, 2004 and provided to the Planning Commission at the May 6, 2004 hearing. The Planning Commission continued the hearing to May 20, 2004 to allow for distribution 10 days prior to certification of the EIR of the response to comments to public agencies who commented on the Draft EIR pursuant to Public Resource Code Section 21092.5 (CEQA Statute).

Summary of concerns and issues raised at May 6, 2004 hearing

Two speakers at the May 6, 2004 expressed concerns and opposition to the project.

Mr. Gerald Pugh gave testimony at the hearing and has submitted five letters regarding this proposed project. Four of those letters and the responses are included in the FEIR. One letter was received by Staff after the May 6, 2004 hearing, which is attached to this memorandum and discussed in a subsequent section. Mr. Pugh's concerns at the hearing reiterated concerns listed in his previous letters regarding: 1) not including the cement plant in the Draft EIR, 2) tire burning not properly reviewed, and 3) questioned mitigation for slope stability and erosion requirements. He is in opposition to the project. These topics have been adequately responded to in the FEIR. (See response to comment letters C2, C8, C13, and C21)

Mr. Matthew Woods gave testimony at the hearing. Mr. Woods submitted a letter as Board Member of Citizens for a Better Community to the Mojave Water Agency regarding the Draft EIR. This letter and the Mojave Water Agency response to Mr. Woods are included in Appendix L in the FEIR. Mr. Woods concerns from his testimony include: 1) dust from mining operations, 2) insufficient air monitoring stations in the Lucerne Valley, 3) air quality regulators have a conflict of interest, 4) groundwater contamination will occur from oil and diesel stored at the mine, and 5) groundwater monitoring not conducted by independent party. Mr. Eldon Heaston, Deputy Director

for the MDAQMD, was present at the May 6, 2004 hearing and commented that air quality in Lucerne Valley has improved in recent years, and that the one air monitoring station provided sufficient data for the area. Mr. Heaston also mentioned that the MDAQMD has a specific rule that includes several mitigation measures for the limestone mining operations in Lucerne Valley. This is further discussed in the Draft EIR and FEIR. Substances stored at the site that could cause groundwater contamination are subject to the appropriate local, State and Federal standards and regulations. Mr. Woods objected that groundwater monitoring would be conducted by a consultant hired by the Applicant. It is common County practice to require groundwater monitoring be conducted by certified professional hired by the Applicant. The groundwater consultant hired by Mitsubishi is a certified Engineering Geologist. The County Geologist has final review and approval authority of the groundwater monitoring reports.

Changes to Conditions of Approval/Mitigation Measures

Conditions of Approval numbers 53 and 64 were modified slightly in the FEIR. The changes are illustrated below in an underline/strikeout form. The Mitigation Monitoring and Compliance Program that is included in the FEIR will also need to be changed.

- **53.** Prior to the expansion of the Cushenbury mine, a Groundwater Monitoring Program shall be developed and submitted to the County Geologist for review and approval.

Based upon the results of the analysis and existing groundwater data, the Groundwater Monitoring Program shall include recommendations for the location and depth of monitoring wells. The Groundwater Monitoring Program shall also include details with respect to monitoring, sampling, and reporting. Static groundwater levels and groundwater quality shall be measured, analyzed, and reported to the County Geologist annually. Implementation of the Groundwater Monitoring Program may require additional measures, as determined by the County Geologist based upon the monitoring results.

Prior to ~~the either excavation pit~~ floor (the East pit or West pit) reaching an elevation of 4,402 feet (within 50 feet of presumed groundwater levels), at least three monitoring wells shall be established within the excavation area. As new monitoring wells are constructed, they shall be added to the annual Groundwater Monitoring Program. (EIR Mitigation Measure HYD-1)

- **64.** The project proponent shall not bring donkeys or domestic sheep onto the proposed project site or adjacent lands under its control. The project proponent shall not authorize others to bring donkeys or domestic sheep onto such lands. Training for mine employees shall include instructions to report observations of domestic animals to the project proponent's Environmental Manager. Upon receiving any such reports, the Environmental Manager shall contact the appropriate authorities for removal.

Prior to blasting activities within the project area, mine employees shall conduct a visual inspection of the blast area to ascertain the presence or absence of bighorn sheep, deer, and/or people. If bighorn sheep, deer, or people are located within the blast area, mine employees shall employ non-~~threatening harmful~~ measures to remove the sheep, deer, or people from the blast area. (EIR Mitigation Measure BIO-9)

Correspondence received since the last hearing on May 6, 2004

Two letters were received by Staff after the May 6, 2004 hearing from Gerald Pugh and Betty Schmidt and are included as attachments to this memorandum. Gerald Pugh previously submitted four letters and Betty Schmidt previously submitted two letters. These previously submitted letters, as well as the responses to them, are included in the FEIR.

The April 28, 2004 letter from Gerald Pugh identifies similar issues brought up in his previous letters with the exception of one comment citing Federal Code of Regulations requiring public participation in approval of new kiln to burn tires. This reference to Chapter 40 of the Federal Code of Regulations is incorrect. These regulations refer to hazardous waste. Tires and biosolids are not considered hazardous wastes under State and Federal regulations. Burning of these additives are regulated by the Mojave Desert Air Quality Management District. For reference Gerald Pugh's previous comment letters in the FEIR are designated as C2, C8, C13, and C21.

The recent letter from Betty Schmidt states that no reclamation has been conducted as required by their present permit. This is not the case. Once mined benches reach their final configuration, then reclamation can begin. Only a small portion of the mine has reached the final configuration. Revegetation has been initiated in those areas that are at final elevations. For reference Betty Schmidt's previous comment letters in the FEIR are designated as C14 and C23.

Statement of Facts, Findings and Statement of Overriding Considerations

The Environmental Impact Report (EIR) [SCH #2001101044] was prepared under contract by the County acting as lead agency under the California Environmental Quality Act ("CEQA"). The Initial Study, Notice of Preparation, Notice of Availability, Draft EIR, Technical Studies and Final EIR containing Responses to Comments, Errata and including the Mitigation Monitoring and Compliance Program constitute the EIR for this project. These documents will be referred to collectively as the EIR. These Findings are based on the entire record before this Commission, including the EIR.

The County has used its independent judgement in the preparation and review of the EIR. The EIR adequately describes the environmental impacts that will result from the proposed project. The EIR determined that the project would result in unavoidable significant impacts for biological resources (carbonate plant species, Nelson's bighorn sheep). In addition, the EIR identified potential unavoidable cumulative impacts for biological and visual resources and for air quality related to PM₁₀ and NOx.

California Public Resources Code 21002 provides: "In the event specific economic, social, and other conditions make infeasible such project alternatives or such mitigation measures, individual projects can be approved in spite of one or more significant effects thereof." Section 21002.1(c) provides: "In the event that economic, social, or other conditions make it infeasible to mitigate one or more significant effects of a project on the environment, the Project may nonetheless be approved or carried out at the discretion of a public agency...." Finally, California Administrative Code, Title 14, 15093(a) states: "If the benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered 'acceptable.'"

In approving this project, the Planning Commission is adopting CEQA Findings and a Statement of Overriding Considerations (attached) addressing the significant unavoidable impacts as identified in the EIR. Appropriate mitigation measures have been incorporated for all other impacts into the Conditions of Approval and into the Mitigation Monitoring and Compliance Program. This will ensure that all other impacts are reduced to a level of non-significance.

Specifically these significant unavoidable impacts are:

- 1) Biological Resources impacts related to:
 - a) Carbonate-endemic Plant Species
 - b) Wildlife Movement and Bighorn Sheep Lambing Sites
 - c) Cumulative Impacts related to Wildlife Movement and Bighorn Sheep

- 2) Visual Resources Impacts related to:
 - a) Impacted Views from the Roadway
 - b) Views from Residences
 - c) Cumulative Impacts related to the Viewshed
- 3) Cumulative Air Quality Impacts Related to PM10 and NOx Emissions

Attached is a letter from Mitsubishi Cement Corporation dated May 12, 2004 providing the percentage loss of mineable material and high grade limestone for each Project Alternative as discussed in the CEQA Findings. In support of those percentages, a letter from Lilburn Corporation dated May 12, 2004, with attached cross sections illustrating the loss of mineable material and high grade limestone from Alternative 2 through 4, is also attached. The losses of mineable material are summarized below:

Alternative	Loss of mineable limestone	Loss of high grade limestone
1	100%	100%
2	35%	80%
3 *	30%	40%
4 *	80%	100%

If the Commission decides to approve the project, it will be concluding that all potential adverse environmental impacts and all feasible mitigation measures to reduce these impacts have been identified in the Draft EIR, the FEIR and public testimony. These mitigation measures have been included as Conditions of Approval. The Commission will also be concluding that a reasonable range of alternatives was considered in the EIR, and that no feasible alternatives that substantially lessen project impacts are available for adoption.

The Commission will be endorsing the economic, social and environmental benefits and important public policy objectives, which will result from implementing the Project, identified in the material before it and that it has balanced these benefits against the unavoidable significant adverse effects of the Project. Given the substantial benefits that will accrue to the County of San Bernardino, the region, and the State of California, the Commission will be determining that the benefits identified in the Statement of Overriding Considerations override the unavoidable environmental effects.

The explicit findings required by the Commission are as follows:

Finding: Based on the entire record before us, this Commission finds that having considered the unavoidable adverse impacts of the Project, this Commission hereby determines that all feasible mitigation has been adopted to reduce or avoid the potentially significant impacts identified in the EIR, and that no additional feasible mitigation is available to further reduce significant impacts. This Commission finds that economic, social, and environmental considerations of the Project outweigh the unavoidable adverse impacts described above. Further, this Commission finds that each of the separate benefits of the proposed project is hereby determined to be, in itself and independent of the other project benefits, a basis for overriding all unavoidable environmental impacts identified in the EIR and in these Findings. In making this finding, this Commission has balanced the benefits of the proposed project against its unavoidable environmental impacts and has indicated its willingness to accept those risks.

* Figures have been corrected from the advance copy of this memo sent via e-mail to the Planning Commission.

Furthermore, this Commission has considered the alternatives to the Project, and makes the following finding:

Finding: Based on the entire record before us, this Commission finds that feasible alternatives to the proposed project that are capable of reducing identified impacts have been considered and rejected because the alternatives offer a reduced level of benefit when compared to the Project and the alternatives may introduce new adverse environmental impacts.

Attachments:

Gerald Pugh letter dated April 28, 2004

Betty Schmidt letter dated April 29, 2004

[CEQA Findings](#)

Mitsubishi Cement Corporation letter dated May 12, 2004

Lilburn Corporation letter dated May 12, 2004 w/attachments